2022-5302

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

LEATRICE TANNER-BROWN, ET AL.,

PLAINTIFFS-APPELLANTS

V.

DEBRA HAALAND, ET AL.

DEFENDANTS-APPELLEES

APPEAL FROM THE
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
CASE NO. 1:21-CV-565-RC

BRIEF OF PLAINTIFFS-APPELLANTS

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CERTIFICATE OF COUNSEL AS TO PARTIES, RULINGS AND RELATED CASES

Appellants respectfully submit this Certificate as to Parties, Rulings and Related Cases pursuant to F.R.A.P. 28(a)(1) and Circuit Rule 28(a)(1).

I. PARTIES AND AMICI

A. Appellants: Appellant, Harvest Institute Freedmen's Federation (hereinafter "HIFF"), is an Ohio limited liability company formed for the specific purpose of pursuing redress on behalf of Freedmen. Appellant, Leatrice Tanner-Brown, a Cherokee Freedmen and member of the Cherokee Tribe, is a citizen of the United States of America and a resident of the State of California. Ms. Tanner-Brown brings this appeal in her capacity as the representative of the estate of her now deceased Cherokee Freedman grandfather, George Curls, and similarly situated Freedmen.

Pursuant to F.R.A.P. 26.1 and Circuit Rule 26.1, this is to state that Appellants are not acting on behalf of any entities or their "parent companies [or] any publicly-held company that has a 10% or greater ownership interest (such as stock or partnership shares) in the entity."

B. Appellees: Debra Haaland is the United States Secretary of the Interior. Tara Maclean is the Assistant Secretary for Indian Affairs.

C. Amici: None known of as of the date hereof.

II. RULINGS UNDER REVIEW

July 8, 2022 Order granting Appellees' Motion to dismiss the Complaint and October 28, 2022 Order denying Appellants' Motion to Alter or Amend the July 8, 2022 Order.

III. RELATED CASES

Harvest Institute Freedmen Federation, et al. v. United States, et al., U.S. Court of Appeals, Sixth Circuit, Case No. 2011-3113; Harvest Institute Freedmen Federation, et al. v. United States, et al., U.S. Court of Appeals, Federal Circuit, Case No. 2010-5104, and Case No. 2016-5040, Leatrice Tanner-Brown v. Sally Jewell, et al.

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JURISDICTIONAL STATEMENT

On March 3, 2021, Appellants Harvest Institute Freedmen Federation, LLC and Cherokee Freedman, Leatrice Tanner-Brown as Representative of the Estate of her grandfather, Cherokee Freedman George Curls and of a Putative Appellants' Class of similarly situated Freedmen, ("Appellants") filed a complaint against the United States and the Secretary of the Department of the Interior for an accounting from the Secretary of Interior of the management of land allotted to Freedmen minors under The Curtis Act, 30 Stat. 495, which allotted the land of the Five Civilized Tribes[1].

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[1] The Five Civilized Tribes allied themselves with the Confederacy during the Civil War and attempted to maintain slaves following the War. As a result of the Tribes disloyalty to the United States during the Civil War all territory owned by the Tribes was forfeited. The status of the Tribes was reestablished under Treaties entered in 1866.

The Treaties of 1866 came into existence as a result of the post-civil war reconciliation effort, and provided a means for the Five Tribes to re-establish their government-to-government relations with the United States, following their ill-concerned alliances with the Confederate States of America and long history of slavery. The Treaties addressed a number of issues for readmitting the Five Tribes back into the federal union, including amnesty for all war crimes committed by its citizens, establishment of federal courts in the Indian territory, the settlement of "civilized friendly Indians" within the Tribes and the adoption of all freed slaves and free colored persons into the Tribes as tribal citizens. Article IX of the Cherokee Treaty is an example, and provides:

> The Cherokee nation having, voluntarily, in February, eighteen hundred and sixty-three, by an act of their national council, forever abolished slavery, hereby covenant and agree that never hereafter shall either slavery or involuntary servitude exist in their nation otherwise than in the punishment of crime, whereof the party shall have been duly convicted, in accordance with laws applicable to all the members of said tribe alike. They further agree that **all freedmen who have been liberated by voluntary act of their former owners by law, as well as all free colored persons who were in the country at the commencement of the rebellion, and are now residents there in, or who may return within six months, and their**

In order to protect the Tribes' from fraud and exploitation at the hands of unscrupulous settlers moving into Indian Country, at the time of Oklahoma statehood, Congress imposed restrictions against alienation of the Curtis Act allotments. These restrictions against alienation of the Curtis Act allotments were removed by the Act of May 27, 1908, in relation to Freedmen allotments. However, restrictions against alienation of allotments were retained in relation to allotments that had been made to so-called "Blood Indians" and Freedmen minors.

Section 6 of the Act of May 27, 1908, which addressed Freedmen minors, textually reiterated and incorporated the traditional federal" guardian-ward "doctrine first articulated in Cherokee Nation v. Georgia, 30 U.S. (5 Pet.)1 (1831)[2] in relation to the status between the United States and so-called Blood Indians Under this traditional federal "guardian-ward" doctrine all federal officials, including the Secretary of Interior, were held to a strict standard of compliance with fiduciary

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> **descendants, shall have all the rights of native Cherokees:** Provided, that owners of slaves so emancipated in the Cherokee nation shall never receive any compensation or pay for the slaves so emancipated.

Under the 1866 Treaties, Freedmen and their descendants, were to receive all the rights of native Tribe members. "All rights" can only be read to mean all rights, including but not limited to, the right of citizenship. See, Appellant Brief, Cherokee Nation v. Nash, Case No. SC-2011-02, Supreme Court of the Cherokee Nation,(emphasis added).

[2] In Cherokee Nation v. Georgia, Chief Justice Marshall stated "Indian tribes may, more correctly, perhaps be denominated domestic dependent nations…in a state of pupillage and that their relation to the United States resembles that of a ward to his guardian. (Emphasis added)

duties owed to Indians. This standard of care was incorporated into and reiterated in §6 of the Act of May 27, 1908 in relation to Freedmen minors.

Notwithstanding the above history and express codification of fiduciary duties owed to Appellants, the repeated demands of Appellants for an accounting from the Secretary concerning the management of Freedmen minor Curtis Act allotments, has been ignored. Appellees have steadfastly refused to provide the requested accounting to Appellants. An action was therefore instituted in United States District Court to compel Appellees to comply with their duty under the Act of May 27, 1908 to Freedmen minors, and their descendants and to provide an accounting of the management of the minors' Curtis Act allotments.

The district court had subject matter jurisdiction over this action under 28 U.S.C. §1331, 5 U.S.C. §701, et seq., the Administrative Procedures Act, 28 U.S.C. §1491, The Tucker Act and 28 U.S.C. §1505, The Indian Tucker Act.

On July 8, 2022, the district court granted Appellees' motion to dismiss based on standing. On October 28, 2022 the district court denied Appellant's motion to alter or amend.

On November 18, 2022, Appellants filed a timely notice of appeal. This appeal is from a final order and judgment that disposes of all parties claims. This court has jurisdiction under 28 U.S.C. §1291.

STATEMENT OF THE ISSUES

1. Whether the district court erred when it held before a trust beneficiary has Article III standing, to demand an accounting concerning of the management of trust property, the beneficiary must first show that the trustee has mismanaged the trust corpus.

2. Whether the standard of fiduciary care owed by the United States to Freedmen minors differs from the standard of care owed to "so called" Blood Indians.

STATEMENT OF THE CASE

On March 3, 2021, Appellants filed an action against Appellees for an accounting of the management of Curtis Act allotments received by Freedmen minors. On September 15, 2021, Appellees moved to dismiss Appellants' Complaint. On July 22, 2022 Appellate moved for leave to certify a class. On July 8, 2022, the District Court granted Appellees' Motion to Dismiss. On August 5, 2022 Appellants moved to alter or amend the July 8, 2022 dismissal order. The district Court denied the motion to alter or amend on October 28, 2022. Appellants timely appealed to this Court on November 18, 2022.

I. INTRODUCTION AND SUMMARY OF ARGUMENT

This action, at its core, is simple. The United States has a duty under §6 of the Act of May 27, 1908 and the traditional "guardian-ward" standard of care owed to Indians by the United States, to account to Appellants for management of land allotted to Freedmen minors under the Curtis Act of 1898.

The district court order that Appellants lacked standing to pursue an action against Appellants because they failed to demonstrate that their allotments had been mismanaged or otherwise harmed in a manner that capable of judicial redress , is incorrect. The injury that Appellants seek to redress is the Secretary's failure to provide the requested accounting. Whether an injury to the underlying beneficial estate occurred can not be determined until an accounting is first provided. The

district court's order does not focus on the correct object of Appellants' Complaint. The Order must therefore be reversed.

II. PROCEDURAL HISTORY AND FACTUAL ALLEGATIONS[3]

During the Civil War, the Five Civilized Tribes (*i.e*., the Seminole, Cherokee, Choctaw, Creek, and Chickasaw Tribes) kept slaves and allied with the Confederacy. See Compl. ¶ 13. Beginning in 1866, following the defeat of the Confederacy, the United States entered into a series of treaties and agreements with the Five Civilized Tribes that, among other things, emancipated the Tribes' slaves and provided rights for the emancipated slaves (known as the "Freedmen") within the Tribes. *See id.; see also, e.g.,* Treaty of 1866, 14 Stat. 755 (Seminole); Treaty of 1898, 30 Stat. 567 (Seminole); Treaty of 1866, 14 Stat. 785 (Creek); Treaty of 1897, 30 Stat. 496 (Creek); Treaty of 1901, 31 Stat. 861 (Creek); Treaty of 1866, 14 Stat. 799 (Cherokee); Treaty of 1866, 14 Stat. 769 (Choctaw and Chickasaw). The treaties had a general common purpose between them, although their provisions varied. See Compl. ¶ 13.

[3] Although Appellants disputed the Appellees' characterization of historical facts throughout their "History of the Freedmen and Indian Allotments," Appellants did not dispute the basic facts cited by Appellees regarding the occurrence of historical events and statements that were made. Plaintiffs incorporate by reference as if fully set forth herein **Exhibits A through H** filed with Appellants Memorandum Of Points And Authorities In Opposition To Appellees Motion To Dismiss on January 13, 2015 (**ECF 16-1 through 16-22**) in Civil Action No. 1:14-cv-1065-RC (D.D.C.).

The recent Opinion of the Supreme Court of the Cherokee Nation in *In Re: Effect of Cherokee Nation v. Nash, etc.,*[4] Case No. SC-17-07 (Feb. 22, 2021), succinctly describes the promise of equality and justice at last for the freed Blacks:

> On war-torn soil in Indian Territory during Reconstruction, thousands of miles from their respective homelands, the heartbeats of three First Nations, the Cherokees, the Shawnees, and the Delawares, and three continents of flesh tones and cultures, Native Americans, African Americans, and adopted or intermarried-European Americans, were forced to coalesce and weave together a single nation to be known by only one name henceforth: the Cherokee Nation. One hundred and fifty-five years after the 1866 Treaty,[5] native Cherokees must step fully into the promise they made "[o]n the far end of the Trail of Tears."[6] By doing so, the Cherokee Nation, as a whole, lifts itself into the 21st century and sheds the heavy weight of antebellum and the pervasiveness of racism and racial injustice in favor of equality and justice for all.

III. UNEQUIVOCALLY, FREEDMEN HAVE RIGHTS EQUIVALENT TO "BY BLOOD" OR NATIVE CHEROKEES.[7]

[4] The complete title caption is *In Re: Effect of Cherokee Nation v. Nash, and Van v. Zinke, District Court for the District of Columbia, Case No. 13-01313, (TFH) and Petition for Writ of Mandamus requiring the Cherokee Nation Registrar to Begin Processing Citizenship Applications,* No. SC-17-07, 2021 WL 2011566 (Cherokee Sup. Ct. Feb. 22, 2021). A copy of this opinion is attached hereto as **Exhi**bit **I**.

[5] Treaty with the Cherokee, 1866, U.S.-Cherokee Nation of Indians, July 19, 1866, hereinafter "1866 Treaty."

[6] *McGirt v. Oklahoma*, 591 U.S. __, 140 S. Ct. 2452 (2020).

[7] *Cherokee Nation v. Nash*, 267 F. Supp. 3d 86, 127 (D.D.C. 2017). In *Nash*, the Court held that while the Cherokee Nation maintains a sovereign right to determine its membership, it must do so equally with respect to native Cherokees and the descendants of Freedmen per Article 9 of the 1866 Treaty with the Cherokee because "neither has rights either superior or, importantly, inferior to the other." *Id.* at 140. Thus, **any rights of citizenship for native Cherokees must be extended to Cherokee Freedmen.** *Id.* (emphasis added).

In Re: Effect of Cherokee Nation v. Nash, p. 3 (attached as **Exhibit I** hereto) (emphasis added).

In 1887 the United States enacted the Dawes Act, also known as the "General Allotment Act" of Feb. 8, 1887.[8] In 1893, the United States established the Dawes Commission, which by order of Congress in 1896 began creating authoritative membership rolls for all Native American tribes in Indian Territory, including the Cherokee Nation.[9] It authorized the President of the United States to subdivide Native American tribal communal landholdings into allotments for Native American heads of families and individuals. See Compl. ¶ 14. In 1898, the United States enacted the Curtis Act, ch 517, 30 Stat. 495 (June 28, 1898),[10] which allotted the land of the Five Civilized Tribes. The Curtis Act was an amendment to the Dawes Act and resulted in the break-up of tribal governments and communal lands in Indian Territory (now Oklahoma) of the Five Civilized Tribes of Indian Territory. These tribes had been previously exempt from the Dawes Act because of the terms of their treaties. *See id.*[11]

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[8] 24 Stat. 388, ch. 119, 25 U.S.C. 331.

[9] *See Whitmire v. The Cherokee Nation*, Decree of February 3, 1896 (Ct. Cl.), *Cherokee Nation & United States v. Whitmire*, 223 U.S. 108, 115-16 (1912) ("*Whitmire III*").

[10] The official name of the Curtis Act is "Indians in Indian Territory."

[11] *See also* Wright, Muriel H. *A Guide to the Indian Tribes of Oklahoma*. Norman, OK: University of Oklahoma Press. 1968.

On May 27, 1908, the United States enacted the law that is at the center of this case, Five Civilized Tribes, Act of May 27, 1908, 35 Stat. 312 ("**Act**" or "**1908 Act**"). Section 6 of the 1908 Act states in part:

> That the persons and property of minor allottees of the Five Civilized Tribes shall, except as otherwise specifically provided by law, be subject to the jurisdiction of the probate courts of the State of Oklahoma. The Secretary of the Interior is hereby empowered, under rules and regulations to be prescribed by him, to appoint such local representatives within the State of Oklahoma who shall be citizens of that State or now domiciled therein as he may deem necessary to inquire into and investigate the conduct of guardians or curators having in charge the estates of such minors, and whenever such representative or representatives of the Secretary of the Interior shall be of opinion that the estate of any minor is not being properly cared for by the guardian or curator, or that the same is in any manner being dissipated or wasted or being permitted to deteriorate in value by reason of the negligence or carelessness or incompetency of the guardian or curator, said representative or representatives of the Secretary of the Interior shall have power and it **shall be their duty to report said matter in full** to the proper probate court and take the necessary steps to have such matter fully investigated, and go to the further extent of prosecuting any necessary remedy, either civil or criminal, or both, to preserve the property and protect the interests of said minor allottees; and it shall be the further duty of such representative or representatives to make full and complete reports to the Secretary of the Interior. All such reports, either to the Secretary of the Interior or to the proper probate court, shall become public records and subject to the inspection and examination of the public, and the necessary court fees shall be allowed against the estates of said minors. The probate courts may, in their discretion, appoint any such representative of the Secretary of the Interior as guardian or curator for such minors, without fee or charge.

Five Civilized Tribes, Act of May 27, 1908, 35 Stat. 312, sec. 6 (emphasis added).

The grandfather of Plaintiff Tanner-Brown, George Curls, was enrolled on the Dawes Roll of the Cherokee Freedmen, pursuant to the Dawes Act on July 1, 1902. At the time of his enrollment, George Curls was five years old, having been born to former Cherokee slave parents in Indian Country, Oklahoma in 1897. See Compl. ¶ 8. Mr. Curls received forty-acre and twenty-acre allotment deeds from the Cherokee Tribe under the Curtis Act on December 5, 1910. Under these two deeds, Mr. Curls received Curtis Act allotments equaling 60 acres. These allotments were received when Mr. Curls was a minor, thirteen years old. *Id. See,* **Exhibit J**, for Certified Copy of "Allotment Deed" and a Certified Copy of the twenty acre "Homestead Deed," also received by Mr. Curls.

Under the 1908 Act, restrictions against alienation of Freedmen allotments or royalties received therefrom, were retained for minors, such as Mr. Curls and his siblings. Mr. Curls is entitled to an accounting concerning the management of his allotment. Under §6, the Secretary has a duty to provide that accounting.

IV. ARGUMENT AND AUTHORITY

A. APPELLANTS HAVE STANDING

The order of the district Court states Appellants failed to show a concrete injury caused by Appellees' mismanagement of Mr. Curls' allotment. Mr. Curls and all Freedmen minors are entitled to the same fiduciary standards of care that applies

to Blood Indians. An accounting is due regardless of whether an injury to the allotment has been established. The district court order puts the cart before the horse.

Appellants have demonstrated standing to sue by (1) alleging their members and decedents, *including George Curls personally* suffered injury-in-fact due to the putative action (or inaction) of the defendants; (2) demonstrating a causal link between the injury and the actions of the defendant; and (3) presenting an injury redressable by favorable judicial action (Compl. ¶¶ 8, 9, 17, 24, 25, 29, 33). Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992); accord Nat'l Recycling Coal. v. Browner, 984 F.2d 1243, 1248 (D.C. Cir. 1993). The failure complained of is the failure to provide an accounting. This is not a claim that the trust property has been mismanaged. It is a claim for information.

The Complaint in the present action alleges that on November 12, 2020, Plaintiff Tanner-Brown qualified as the legal and duly appointed Personal Representative of the estate of George Curls who, as a Freedmen minor, received two Indian land allotments (described above); and the provisions of the 1908 Act apply to those allotments. Compl. ¶¶ 8, 14, 22, 23, 30, ECF 1-1. Freedmen minors including George Curls suffered, and the Curls' estate and similar ones continue to suffer, from an injury by Appellees that the Court now has the authority and obligation to redress, the right to an accounting. Appellants therefore had standing to bring an action.

The district Court held the Complaint did not allege an injury in fact that is traceable to the Secretary. The district court stated "first element of the Article III standing analysis, Appellants must allege, specifically, that there were oil, gas, or agricultural leases on Appellants' allotment(s) when they were minors and that a 'particular lease' was mismanaged by Appellants' guardian[s] or other stakeholders." *Id.* at 18. These suggestions are incorrect because they imply Appellants are accusing the Secretary of mismanagement before management information has been provided.

The Complaint alleges that George Curls was among the minor Freedmen who were injured by the failure and nonfeasance of Appellees; that Appellees had an explicit fiduciary duty to protect him (and other minor Freedmen) from waste and exploitation of land allotments under the 1908 Act; and Appellees breached that duty completely. *E.g.*, Compl. ¶¶ 8, 23, 24, 26, 29, 30, 33, 35. Furthermore, the Complaint alleges that a "fiduciary's duties of loyalty and prudence also entail a duty to conduct an independent investigation into, and continually to monitor the assets of his charge. From [July 1, 1898 through the present], Appellees breached this duty of investigation and monitoring with respect to Freedmen. During [that] Period, none of the Appellees or their predecessors made any attempt to effectively monitor or respond to mistreatment and exploitation of Freedmen minor allotments." Compl. ¶¶ 18(e), 31.

Appellees argued below that the 1908 Act does not apply to Appellants, and resort to arguing: "Appellants still have not alleged that George Curls' purported injury was caused by 'negligence or carelessness or incompetency of the guardian or curator' so as to trigger any of the largely discretionary protective options at the Secretary's disposal under the 1908 Act and, under Appellants' theory, the supposed duty to provide an accounting." Appellees Memo at 19. Appellees are just wrong. Section 6 of the 1908 Act provides as follows:

> . . . whenever such representative or representatives [appointed by] the Secretary of the Interior shall be of opinion that the estate of any minor is not being properly cared ***for*** by the guardian or curator, or that the same is in any manner being dissipated or wasted or being permitted to deteriorate in value by reason of the negligence or carelessness or incompetency of the guardian or curator, . . . it shall be their duty to report said matter in full to the proper probate court and take the necessary steps to have such matter fully investigated, and go to the further extent of prosecuting any necessary remedy, either civil or criminal, or both, to preserve the property and protect the interests of said minor allottees; **and it shall be the further duty of such representative or representatives to make full and complete reports to the Secretary of the Interior**. All such reports, either to the Secretary of the Interior or to the proper probate court, shall become public records and subject to the inspection and examination of the public, and the necessary court fees shall be allowed against the estates of said minors . (emphasis added).

Despite the foregoing underscored language, according to the district court the Complaint must specifically allege "negligence or carelessness or incompetency of the guardian or curator" to trigger the "largely discretionary protective options" of the 1908 Act. Not so (although clearly the guardians were incompetent for not

providing accountings). The district court argument is wrong because it is contrary to the plain language and the intent of the 1908 Act, which by its explicit terms states "it shall be the ***further*** **duty** of such representative or representatives to make **full and complete reports to the Secretary of the Interior.**" (emphasis added). The phrase "it shall be the further duty. . .to make full and complete reports to the Secretary of Interior," if it is to have any meaning whatsoever, must mean that there are to be full and complete accountings to the Secretary regardless of the nature of the breach of fiduciary duty.

Further, in order to demonstrate standing, Appellants "need not prove a cause-and effect relationship with absolute certainty; substantial likelihood of the alleged causality meets the test. This is true even where the injury hinges on the reactions of third parties . . . to the agency's conduct." Competitive Enter. Inst. v. Nat'l Highway Traffic Safety Admin., 901 F.2d 107, 113 (D.C. Cir. 1990) ("The standing determination must not be confused with our assessment of whether the party could succeed on the merits.") (citation omitted*);* Public Citizen v. Federal Trade Comm'n, 869 F.2d 1541, 1549 (D.C. Cir. 1989).

The district court erred when it found Harvest has not met the requirements for *associational* standing. Leatrice Tanner-Brown and other representatives of former Freedmen minors all have a direct personal stake in receipt of an accounting for breach of fiduciary duties owed to them by Appellants. The vindication of the

rights and interests of these Freedmen is the very reason for creation and the existence of Harvest. Harvest brings suit on behalf of these Freedmen who, like Ms. Tanner-Brown, have a right to participate in this litigation but prefer to be represented by Harvest. Tanner-Brown is a member of the Harvest Institute Freedmen Federation. *Id*. Harvest thus also meets the requirements for associational standing because (a) its members (**like Ms. Tanner-Brown**) would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are obviously germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. Hunt v. Wash. State Apple Adver. Comm'n, 432 U.S. 333, 343 (1977). Rejecting standing for Harvest would contravene this as well as later precedence. *See id*.

The reason Harvest does not need individual member participation is because a fiduciary's breach occurs when upon demand for an accounting the fiduciary fails or refuses to provide it. Appellants demand an accounting of the proceeds received / managed by guardians appointed over Freedmen minors whose allotments were leased. **The conduct of the fiduciary in failing to provide that accounting is *common* to all Freedmen minors who were subject to Section 6 of the 1908 Act. Although depending on the accounting produced we may need subclasses, there is no reasonable basis for denying Harvest standing when it has the same claim**

and interest in the accounting as those minors, their legal representatives, and its own members.

The Supreme Court has also said that the prudential third precondition in Hunt "is best seen as focusing on … matters of administrative convenience and efficiency..." United Food & Commercial Workers Union Local 751 v. Brown Group, Inc., 517 U.S. 544, 557 (1996). Critically, the organizational plaintiff here does not request relief of an individualized nature, but instead an accounting with respect to all former Freedmen minors covered by the 1908 Act. To deny Harvest standing because of the alleged need for direct participation of all those individuals and their representatives would clearly undermine the focus chosen by the Supreme Court. *See id.*

Furthermore, only one named plaintiff need demonstrate standing. Korte v. Sebelius, 735 F.3d 654, 667, n.8 (7th Cir. 2013). Thus, on this basis alone, as discussed above Plaintiffs have satisfied the standing requirement by establishing Ms. Tanner-Brown's standing. **"Where, as here, at least one plaintiff has standing, jurisdiction is secure**," and the Court thus need not address whether Harvest has standing to bring suit on behalf of its members. Kachalsky v. Cty. of Westchester, 701 F.3d 81, 101 n.2 (2d Cir. 2012) (emphasis added); Lujan v. Defenders of Wildlife, 504 U.S. 563 (stating that a single member with standing in his or her own right is sufficient to establish that an organization has standing);

Hispanic Nat'l Law Enf't Ass'n NCR v. Prince George's Cty., Civil Action No. TDC-18-3821, 2019 U.S. Dist. LEXIS 112977, at *13-14 (D. Md. July 8, 2019).

To the extent the Court did not reach the issue of Harvest's standing, however, the Supreme Court's three-part association standing test has also been satisfied. *See* Hunt v. Washington State Apple Advert. Comm'n, 432 U.S. at 343. Rejecting standing for Harvest would contravene this as well as later precedence. *See id*. The Privileges and Immunities Clause permits an association to seek relief on behalf of its members who are persons, which is precisely what Harvest is doing. *See id.* Harvest members are individual, natural persons and therefore have a direct interest and standing to challenge the governments' inaction against the Freedmen.

B. APPELLANTS STATED A CLAIM FOR AN ACCOUNTING UPON WHICH RELIEF MAY BE GRANTED

It is well known that Congress created the conditions for widespread graft and abuse through the 1908 Act. As a legal historian recently reported:

> That Act transferred jurisdiction over land, persons and property of Indian "minors and incompetents" from the Interior Department, to local county probate courts in Oklahoma. Related legislation also enabled the Interior Department to put land in or out of trust protection based on its assessment of the competency of Native American allottees and their heirs.
>
> Unfettered by federal supervisory authority, local probate courts and attorneys seized the opportunity to use guardianships to steal Native Americans estates and lands. As described in 1924 by Zitkála-Šá, a prominent Native American activist commissioned by the Secretary of Interior to study the issue, "When oil is 'struck' on an Indian's property, it is usually considered *prima facie*

> evidence that he is incompetent, and in the appointment of a guardian for him, his wishes in the matter are rarely considered."

Seielstad, Andrea (Prof. of Law), *The disturbing history of how conservatorships were used to exploit, swindle Native Americans,* Univ. of Dayton Mag. (August 20, 2021), online at https://udayton.edu/magazine/2021/08/conservatorship.php. Given the extensive abusive use of guardianships to swindle adult Native Americans, similar unconscionable treatment of their slaves was a certainty. If anything, cheating the Freedmen minors was easier to accomplish because there was no intermediate proof of "incompetency" required for these children. *See id.*

Once a fiduciary relationship is established by statute, the government's fiduciary duties follow as a matter of law. While rooted in and derived from statutes and treaties identified herein, these duties "are largely defined in traditional equitable terms" and may be filled in by reference to trust law.[12] Courts "must infer that Congress intended to impose on [the] trustees traditional fiduciary duties unless Congress has unequivocally expressed an intent to the contrary."[13]

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[12] *Cobell v. Norton,* 240 F.3d 1081, 1099 (D.C. Cir. 2001) ("*Cobell VI*").

[13] *Id*. at 1100 (quoting *NLRB v. Amax Coal Co., Div. of Amax*, 453 U.S. 322, 330 (1981)); *see also Nevada v. United States*, 463 U.S. 110, 142 (1983) ("[W]here only a relationship between the Government and the tribe is involved, the law respecting obligations between a trustee and a beneficiary in private litigation will in many, if not all, respects adequately describe the duty of the United States."); *White Mountain Apache*, 537 U.S. at 475; *Cobell VI*, 240 F.3d at 1098-99 ("It is no doubt true that the government's fiduciary responsibilities necessarily depend on the substantive laws creating those obligations.… This does not mean that the failure to specify the precise nature of the fiduciary obligation or to enumerate the trustee's duties absolves the government of its responsibilities." (internal quotation and citations omitted)).

A trust relationship between the government and minor Freedmen by reason of the 1908 Act. (Truskett v. Closser, 236 U.S. 223, 229 (1915), "held that, notwithstanding the language unconditional language [*sic*] in Section 1 [of the 1908 Act] removing all restrictions from Freedmen allotments, the conditions in Section 2 and 6 also applied to Freedmen minors' allotments")) (emphasis added). *See also* Self v. Prairie Oil & Gas Co., 28 F.2d 590, 593 (8th Cir. 1928) ("[A]fter the going into effect of [the 1908 Act], leases and extensions of prior leases of minor allottees . . .could only be made in the manner permitted by the act") citing Truskett. Self v. Prairie Oil & Gas Co., 28 F.2d 590, 593 (8th Cir. 1928).

It is axiomatic that a "court of equity, having jurisdiction over the administration of trusts, will give to the beneficiaries of a trust such remedies as are necessary for the protection of their interests . . . ." William F. Fratcher, *3 Scott on Trusts* § 199, at 203-04 (4th ed. 1988). Accordingly, the district court had the authority and responsibility to enforce trust duties using its inherent equitable power to ensure protection of the beneficiary. *See, e.g.,* Vill. of Brookfield v. Pentis, 101 F.2d 516, 520-21 (7th Cir. 1939) ("Courts of equity have original inherent jurisdiction to decree and enforce trusts and to do whatever is necessary to preserve them from destruction."); Manchester Band of Pomo Indians, Inc. v. United States, 363 F. Supp. 1238, 1242 (N.D. Cal. 1973) (finding that district courts have

"jurisdiction over actions to compel the responsible officers of the United States to perform [their trust] duties in the event [that] they have not done so.").

Appellants cause of action is derived in part from the 1908 Act that establishes the trust relationship between the Secretary and the Freedmen. In the seminal case of United States v. Mitchell, 463 U.S. 206 (1983) ("Mitchell II"), the Supreme Court recognized a substantive right to enforce trust duties when federal statutes and regulations establish a trust relationship between the government and Indian trust land beneficiaries. The Court concluded that a:

> fiduciary relationship necessarily arises when the Government assumes such elaborate control over . . . property belonging to Indians. All of the necessary elements of a common law trust are present: a trustee (the United States), a beneficiary (the [tribe **or] Indian allottees**), and a trust corpus (Indian timber, lands, and funds).

Id. at 225 (emphasis added). Mitchell II further held that a cause of action to obtain traditionally available remedies for the violation of the rights of the beneficiaries is inherent in and "naturally follows" from the creation of the trust. *Id*. at 226.

The Supreme Court reaffirmed the result of Mitchell II in United States v. White Mountain Apache Tribe, 537 U.S. 465 (2003). There, the plaintiff tribe sued to recover for the government's failure to maintain reservation buildings that had fallen into disrepair while occupied by the government. The government moved to dismiss, arguing it was not legally bound to maintain or restore the property. *Id*. at 469-70. The Supreme Court flatly rejected the government's argument, finding the

absence of law to "expressly subject the Government to duties of management and conservation" to be immaterial. *Id.* at 475. Instead, the Court relied on Mitchell II and held that where a statute gave rise to a trust relationship and the government exercised control over the trust property, it "naturally follow[ed]" that the government had a judicially enforceable fiduciary obligation to preserve the trust property. *Id.* at 475-76 (citing Mitchell II, 463 U.S. at 226).

Here, similar to Mitchell II and *White Mountain Apache*, it is alleged, *inter alia,* that the United States held funds that belong to Mr. Curls and other Freedmen minors and has assumed the fiduciary obligations of a trustee. The longstanding trust relationship between the Freedmen minors and Defendants is rooted in and derived from federal statutes, as well as common-law principals. This body of law gave the United States control over and responsibility for Freedmen funds, but obligates the United States to the full range of fiduciary obligations. It "naturally follows" from the establishment of this trust relationship that an ordinary right of action seeking an accounting and other equitable relief is available to the Freedmen. *See* Cobell v. Norton, 240 F.3d 1081, 1101 (D.C. Cir. 2001) ("*Cobell VI*") ("While Mitchell II involved a claim for damages, nothing in that decision or other Indian cases would imply that appellants are not entitled to declaratory or injunctive relief. Such remedies are the traditional ones for violations of trust duties.*");* Beckett v. Air Line Pilots Ass'n, 995 F.2d 280, 286 (D.C. Cir. 1993) ("Just as an intended third party

beneficiary may sue to enforce a contract, it is equally fundamental that the beneficiary of a trust may maintain a suit to compel the trustee to perform his duties as trustee or to redress a breach of trust." (citing *Restatement (Second) of Trusts* § 199) (1959)).

That cause of action is for a basic fiduciary duty, an accounting, and at this time, Appellants seek an accounting. *See e.g.*, Compl. ¶ 37. This is not an unusual cause of action or relief. As explained by the Federal Circuit:

> An accounting is a species of compulsory disclosure, predicated upon the assumption that the party seeking relief does not have the means to determine how much – or, in fact, whether – any money properly his is being held by another. The appropriate remedy, particularly where the determinations may be detailed and complex, is an order to account in a proceeding in which the burden of establishing the non-existence of money due to the plaintiff rests upon the defendant.

Rosenak v. Poller, 290 F.2d 748, 750 (D.C. Cir. 1961).

Under the 1866 Treaties, Freedmen and Five Civilized Tribes members are to be treated equally. However, the United States takes a paternalistic view towards the Tribes, while rejecting the proposition that any duty whatsoever is owed to the Freedmen. The United States perversely continues to advance defenses against the Freedmen that have been specifically rejected in Cobell v. Babbitt, 30 F. Supp. 2d 24 (D.D.C. 1998). Some examples are: disparate treatment in connection with the government's handling of Appellants' case, discussions of trust status, and the

statute of limitations. In regard to these three factors, *Cobell* held at 30 F. Supp.2d 24, as follows:

> [S]several courts have recognized and as the Plaintiffs allege, allegations **of breach of trust against government officials with regard to the administration of Indian trusts arise under the federal common law**. *See County of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 105 S. Ct. 1245, 84 L.Ed.2d 169 (1985) (explaining that federal question jurisdiction existed in an ejectment action brought by Indian Plaintiffs based, in part, on federal common law); *Vizenor v. Babbitt,* 927 F. Supp. 1193 (D. Minn.1996) (holding that, in a suit against the Secretary and Assistant Secretary of the Interior for breach of trust, the claims arose under federal common law); *White v. Matthews*, 420 F. Supp. 882, 887-88 (D.S.D. 1976) (holding that allegations of breach of trust against the government in a suit brought by Indian Appellants involved federal question jurisdiction under federal common law). Actions arising under federal common law fall within the general federal question jurisdiction conferred by 28 U.S.C. § 1331. *Illinois v. City of Milwaukee*, 406 U.S. 91, 100, 92 S. Ct. 1385, 31 L.Ed2d 712 (1972). The Supreme Court has repeatedly upheld the existence of a trust relationship between the government and the Indian people. *See e.g., United States v. Mitchell II*, 463 U.S. at 225, 103 S. Ct. 2961. The Plaintiffs allege that the government, including the Secretary of the Treasury (to a limited extent) has breached these recognized duties. Therefore, because the Appellants' allegations against the Secretary of the Treasury arise under the statutory law and common law of the United States, this Court has "arising under" jurisdiction over the Appellants' claim.

Cobell, 30 F. Supp. 2d at 38 (emphasis added).

> [Statute of Limitation] First, *the case law in this Circuit shows a strong disfavor of making determinations on limitations issues at the motion to dismiss stage*. *See Firestone v. Firestone*, 76 F.3d 1205, 1210 (D.C. Cir. 1996) holding that the district court erred by dismissing a case with prejudice on a motion to dismiss rather than summary judgment); *Richards v. Mileski*, 662 F.2d 65, 73 (D.C. Cir. 1981) ("There is an inherent problem in using a motion to dismiss for purposes of raising a statute of limitations defense. Although it is true that a complaint sometimes discloses such defects on its face, it is more likely that the Appellant can raise factual setoffs to such an affirmative defense."); *Jones* [*v. Rogers Mem'l Hosp*., 143 U.S. App. D.C. 51, 442 F.2d

> 773, 775 n.2 775 (1971)] ("The issue of when Appellants decedent discovered the injury, or through the exercise of reasonable diligence should have known of the facts giving rise to the claim, is properly one for the trier of fact, save for the exceptional case when it can be established that there is no material issue of fact."). Second, even though the Court may properly judge a motion to dismiss for lack of jurisdiction that raises the limitations defense at the juncture under a summary judgment standard, *see In re Swine Flu Immunization prods. Liability Litigation*, 880 F.2d 1439, 1441-43 (D.C. Cir. 1989), to do so would be premature at this point for the same reasons that summary judgment itself is premature. Namely, discovery has not been completed and to decide whether genuine issues of material fact exist at this point would be imprudent.

Id. at 45 (emphasis added).

It is beyond reasonable dispute that Appellees have a fiduciary duty to provide an accounting and that the district court had the authority to compel them to do so. *See, e.g., Cobell VI*, 240 F.3d at 1104 ("'It is fundamental that **an action for accounting is an equitable claim** and that courts of equity have original jurisdiction to compel an accounting.'" (quoting Klamath & Modoc Tribes, 174 Cl. Ct. at 487) (emphasis added); George T. Bogert, *The Law of Trusts & Trustees* § 963 (2d ed. Rev. & 3d ed. 2007) ("In order to obtain an accounting it is not necessary for the beneficiary to allege that there is any payment immediately due him under the trust or that the trustee in some way is in default.")). Should the accounting reveal that the government has not faithfully carried out its statutory trust obligations, Plaintiffs may also seek such additional equitable relief as may be appropriate to redress those breaches. See Compl. ¶¶ 29, 33, 38.

Ms. Tanner-Brown and Harvest members are persons who are entitled to an accounting of management of the Curtis Act allotments. The Secretary was required under the Act of 1908 to oversee and record the disposition of proceeds from royalties on allotted land held in trust or restricted status by the Secretary of Interior. Appellants meet the conditions for such accounting. Although restrictions on allotments to Freedmen were removed in 1908, those restrictions continued under the provisions of the Act of 1908 as it related to minor Freedmen. The Secretary thus has a duty under Section 6 of the Act to provide an accounting to representatives of minor Freedmen of royalties derived from leases on restricted land held by Freedmen minors. Appellants have stated a viable claim for this accounting that thus should go forward. By necessity, this accounting duty falls squarely on the Appellees under the reporting provisions of the 1908 Act. The district Court was authorized to, indeed required to, compel an accounting of the Freedmen allotment management.

E. RIGHT TO AN ACCOUNTING

A beneficiary of a trust is entitled to an accounting, whether or not an injury is known in advance. Until an accounting is provided, a beneficiary has no means to determining whether the res has been mismanaged. The Court's July 8, 2022 Order improperly shifts this burden of the Trustee to the beneficiary. In this connection, settled authority states:

> The duty to inform and account to beneficiaries of a trust is so embedded in trust law that "the Restatement of Trusts acknowledges

> the duty to inform, which is echoed in the Restatement (Second) of Trusts ["the beneficiary is always entitled to such information as is reasonably necessary to enable him to enforce his rights under the trust or to prevent or redress a breach of trust"] and the Restatement (Third) of Trusts ["beneficiaries are entitled to information needed to enforce their interests."]" Further, the duty to inform is found in the Uniform Trust Code ("The duty to keep the beneficiaries reasonably informed of the administration of the trust is a fundamental duty of a trustee") and has been included in the Uniform Probate Code since its inception. A trustee's duty to keep the beneficiaries informed of a trust's administration is well-recognized in American law and continues to develop."
>
> See, Phillip J. Ruce, The Trustee and the Remainderman: The Trustee's Duty to Inform, 46 Real Prop., Tr. & Est. L. J. 173, 179 (2011).

The Cour's July 8, 2022 Order ignores fundamental tenants of the Trustee-Beneficiary relationship. *Ruce* states: "if a fiduciary can be rendered free from the duty of informing the beneficiary concerning matters of which he is entitled to know equity has been rendered impotent. See, "The Trustee's Duty to Inform" Philip J. Ruce. The Trustee and Remainderman. The Trustee's duty to Inform Real Property, Probate and Trust Law Journal, Vol. 46 No. 1 2011.

Here the Court's July 8, 2022 Order states before a beneficiary has standing, the beneficiary must have evidence that the trust res has been mismanaged. That is contrary to general trust law.

In this connection, the *Ruce* article cited above which capsulizes preeminent authorities on Trust law states:

A. Uniform Trust Code

Section 813 of the UTC covers the duty to inform. Under this section, "[a] trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests."

B. Restatement of Trusts

The Restatement covers the trustee's duty to inform in section 82. Specifically, section 82 states that a trustee has the following duties:

> (a) promptly to inform fairly representative beneficiaries of the existence of the trust, of their tatus as beneficiaries and their right to obtain further
> information, and of basic information concerning the trusteeship;
> (b) to inform beneficiaries of significant changes in their beneficiary status; and
> (c) to keep fairly representative beneficiaries reasonably informed of changes involving the trusteeship and about other significant developments concerning the trust and its administration, particularly
> material information needed by the beneficiaries for the protection of their interests.

The trustees must promptly inform the fairly representative beneficiaries of the pertinent information relating to the trust. This duty includes all things a beneficiary needs to properly enforce their rights as beneficiaries. The comments to section 82 state that the duty to inform covers the following information: the existence, source, and name of the trust; the extent and nature of the beneficiary's interest; the names of the trustees; trustees' contact and compensation information; the roles of co-trustees; and the beneficiary's right to further information, including information concerning the terms of the trust or a copy of the trust instrument.

Comment (d) further explains that this section does not impose a regular or routine requirement of reporting or accounting. However, section 82(c), noted above, and as restated in comment (d) imposes an affirmative requirement that "the trustees inform fairly representative

> beneficiaries of important developments and information that appear reasonably necessary for the beneficiaries to be aware of in order to protect their interests."
>
> Note first that this is an affirmative duty of the trustee; also, only the fairly representative beneficiaries enjoy the benefits of this affirmative duty. This duty encompasses the current beneficiaries and the vested remainder beneficiaries; contingent beneficiaries do not enjoy the benefits of this duty.

In United States v. Creek Nation, 295 U.S. 103 (1935) the Court stated, unless Congress has directed otherwise, the federal executive is held to a strict standard of compliance with fiduciary duties. Similarly, in Seminole Nation v. United States, 316 U.S. 286 (1942) the Court imposed fiduciary obligations applicable to private trustees on federal officials dealing with Indians. Some of Plaintiffs putative class members are Seminole Freedmen.

In United States v. Payne, 264, U.S. 446, 448 (1942) the Court held federal officials are held to "moral obligations of the highest responsibility and trust" and "the most exacting fiduciary standards" and to be bound by every moral and equitable consideration to discharge its trust with good faith and fairness."

The Court affirmed this standard in Morton v. Ruiz, 415 U.S. 199, 236 (1974).

This Court also reiterated the application of ordinary trust standards in Pyramid Lake Paiute Tribe v. Morton, 354 F. Supp. 252 (D.D.C. 1972). These cases make clear unless Congress has specifically directed otherwise federal executive

officials are obliged to adhere strictly to standard fiduciary principles. Defendants have cited no authority that traverses the above cases.

V. ACT OF MAY 27, 1908

The applicability of general trust law to the relationship between the Five Civilized Tribes and the United States was confirmed in United States v. Mitchell, II, 463 US 206 (1983) and reaffirmed in Cobell v. Babbitt, 52 F. Supp. 2d 11 (D.D.C. 1999). Appellants here are not only members of the Five Civilized Tribes, they were also the less sophisticated slaves of the Five Civilized Tribes and required greater protection and paternalistic treatment from the United States than the United States admits in Mitchell and Cobell was accorded by the United States to Plaintiffs' slave masters.

CONCLUSION

For the reasons stated above, the district Court should be reversed.

Respectfully submitted,

s/Percy Squire
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CERTIFICATE OF COMPLIANCE

I, Percy Squire, hereby certify that the above Brief was written in 14-point Times New Roman and contains 6821 words.

s/Percy Squire, Esq.
Percy Squire, Esq. (0022010)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via the Court's electronic filing upon counsel of record June 9, 2023.

s/Percy Squire, Esq.
Percy Squire, Esq. (0022010)

APPENDIX

(Items listed will be filed with Plaintiffs' Memorandum.)

EXHIBIT A. 5/1/2013 Letter to Tanner-Brown from Class Settlement; request proof of ownership of restricted land as of September 30, 2009 [Filed as **Exhibit A and ECF 16-1** in D.D.C. Case No. 1:14-cv-01065-RC].

EXHIBIT B. Oil and Gas Mining Lease dated January 22, 1907, between Julius Curls as Lessor, and Missouri Mining Company as Lessee, with respect to land within Indian Territory. [Filed as **Exhibit B and ECF 16-2** in D.D.C. Case No. 1:14-cv-01065-RC].

EXHIBIT C. Oil and Gas Lease dated May 1, 1908, between Julius Curls as Lessor, and Charles Nobles, Fred Rowe, and William Wood as Lessees. [Filed as **Exhibit C and ECF 16-3** in D.D.C. Case No. 1:14-cv-01065-RC].

EXHIBIT D. Probate Order In Re Matter of Estate of James Curls, a minor, dated September 15, 1908 authorizing Oil and Gas Mining Lease with Willard Oil. Although order states land is known as wild cats land for oil and mining purposes, the company still willing to lease for oil and mining purposes. [Filed as **Exhibit D and ECF 16-4** in D.D.C. Case No. 1:14-cv-01065-RC].

EXHIBIT E. Oil and Gas Lease between Julius and Maggie Curls, as lessor and W.L. Jeffords as lessee, dated June 27, 1916. [Filed as **Exhibit E and ECF 16-5** in D.D.C. Case No. 1:14-cv-01065-RC].

EXHIBIT F (filed as **ECF 16-6 and 16-7**in D.D.C. Case No. 1:14-cv-01065-RC). Certified record of *In Re the Guardianship* of the Curls children Willie, Edward, James, George, Stephenia, Clarence, Beatrice, Julius Curls, minors. On **August 14, 1906** their ages were as follows: Willie (age 13), Edward (age 12), James (11), George (age 9), Stephenia age (8), Clarence (age 6),

Beatrice (age 5), Julius Curls (age 2). In Petition of same date their father Riley Curls requests that Rathbun Alden of Indian Territory be appointed guardian. The following leases are reflected in this Guardianship record previously filed as ECF 16-6 and 16-7:

1. Oil and Gas Mining lease on behalf of **Willie Curls**, dated October 7, 1907 with Willard Oil Company "under terms prescribed by the Secretary of the Interior," with respect to lands in the Cherokee Nation, Indian Territory. Willie is described as a Freedmen citizen of the Cherokee Nation.
2. Report of Master in Chancery authorizing Rathbun Alden to lease **Julius Curls**' property to Willard Oil Company.
3. Report of Master in Chancery dated November 15, 1907 authorizing Rathbun Alden to lease **Julius Curls**' property for agricultural purposes for a five year term.
4. Petition dated August 7, 1907, requesting permission to lease property of **Willie Curls**, Freedmen citizen of the Cherokee Nation born January 7, 1892, to Willard Oil Company "under terms prescribed by the Secretary of the Interior," with respect to land located in the Cherokee Nation, Indian Territory.
5. Department of Interior filing dated July 23, 1907 by **Acting United States Indian Agent** to attorney for Rathbun Alden, Guardian, stating that "notice of sales of leases of **Willie**, **Edward** and **James Curls**, minors, by their guardian Rathbun Alden" has been "posted in this office in a conspicuous place where it will remain until after the sale on the first date of August, 1907." ECF Doc. 16-6, page 9 of 20.
6. Confirmatory Order dated October 19, 1907, for lease of the lands of ward **James Curtis** for "Oil and Gas Mining purpose . . .." Said lease " is upon the form and according to the terms and conditions prescribed by the Secretary of the Interior" . . .."

7. Report of Rathbun Alden that on October 10, 1907 he executed an oil and gas mining lease on behalf of James Curls to Willard Oil Company. Copy of the Lease is attached, and states the leased land is within the Cherokee Indian Nation in Indian Country.
8. Court Order dated October 27, 1907 authorizing the payment of total attorneys fees of $2800 to two law firms for legal services rendered on behalf of the seven Curls children (including George) with respect to the application for enrollment to the Commissioner of the Five Civilized Tribes and the Department of the Interior of the Curls children, **including George Curls**.
9. Report of Leasing by Rathbun Alden that on November 15, 1907, he executed a lease of land within the Cherokee Indian Nation in Indian Country for agricultural purposes on behalf of Stephenia Curls. A copy of the Agricultural Lease is attached.

Exhibit F continued, filed as ECF 16-8, in D.D.C. Case No. 1:14-cv-01065-RC]:

1. Affidavit of John Hall November 9, 1907, stating that 50 cents per acre is a fair rental value for lease of "pasture and hay land" for agricultural purposes in Indian Country. Multiple similar affidavits are included in ECF 16-8.
2. Petition to Lease Lands of Ward for Agriculture Purposes dated November 11, 1907 filed by Rathbun Alden on behalf of **Julius Curls**, a Cherokee Freedmen, to lease land the ward owns in Indian Territory.
3. Petition to Lease Lands of Ward for Agriculture Purposes dated November 11, 1907 filed by Rathbun Alden on behalf of **Beatrice Curls**, a Cherokee Freedmen, to lease land the ward owns in Indian Territory.

4. Petition to Lease Lands of Ward for Agriculture Purposes dated November 11, 1907 filed by Rathbun Alden on behalf of **Stephenia Curls**, a Cherokee Freedmen, to lease land the ward owns in Indian Territory.
5. Masters Report dated November 15, 1907 filed on behalf of minors **Stephenia and Beatrice Curls** to lease hay and pasture lands in Indian Territory for agricultural purposes.
6. Confirmatory Order dated November 15, 1907, for lease of the lands of ward **Julius Curls** in Indian County for agricultural purposes . . ..”
7. Report of Rathbun Alden that on November 11, 1907 he executed a lease lands located in Cherokee Indian Nation in Indian Country for agricultural purposes on behalf of **Julius Curls**. The Agricultural Lease for a five year term is attached.
8. Report of Rathbun Alden that on November 15, 1907 he executed a lease of lands located in Cherokee Indian Nation in Indian Country for agricultural purposes on behalf of minor **Beatrice Curls**. The Agricultural Lease for a five-year term is attached.
9. Confirmatory Orders dated November 1907, for lease of the lands of wards **Stephenia and Beatrice Curls** in Indian County for agricultural purposes.

Exhibit F continued, filed as ECF 16-9, in D.D.C. Case No. 1:14-cv-01065-RC

Exhibit F continued, filed as ECF 16-10, in D.D.C. Case No. 1:14-cv-01065-RC:

1. Petition to Lease for Oil and Gas Mining Purposes dated September 15, 1908 filed by Rathbun Alden on behalf of **James Curls**, a Cherokee Freedmen, to lease land the ward owns in Indian Territory to Willard Oil Company.
2. Order of Court In Re Matter of Estate of James Curls, a minor, dated September 15, 1908 authorizing Oil and Gas Mining Lease with Willard Oil. Although order states

land is what is "known as wild cats land for oil and mining purposes," the company is willing to lease. It is in best interests of minor to test for oil and gas mining purposes during the minority of the ward.

3. Oil and Gas Mining Lease executed by Riley Curls as guardian for **Willie Curls**, a minor, to lessee Willard Oil Company, dated September 15, 1908.
4. Order of Court In Re Matter of Estate of **Willie Curls**, a minor, dated September 15, 1908 authorizing Oil and Gas Mining Lease with Willard Oil. Although order states land is what is "known as wild cats land for oil and mining purposes," the company is willing to lease. It is in best interests of minor to test for oil and gas mining purposes during the minority of the ward.
5. Petition to Lease for Oil and Gas Mining Purposes dated September 15, 1908 filed by Rathbun Alden on behalf of **Willie Curls**, a Cherokee Freedmen, to lease land the ward owns in Indian Territory to Willard Oil Company.
6. Order of Court dated February 5, 1909 that the Guardian's withdrawal of $9.00 from minor James Curls' bank account at National Bank was proper.

Exhibit F continued [filed as **ECF 16-11** in D.D.C. Case No. 1:14-cv-01065-RC].

Exhibit F continued [filed as **ECF 16-12,** in D.D.C. Case No. 1:14-cv-01065-RC].

Exhibit F continued [filed as **ECF 16-13,** in D.D.C. Case No. 1:14-cv-01065-RC].

Exhibit F continued [filed as **ECF 16-14,** in D.D.C. Case No. 1:14-cv-01065-RC].

Exhibit F continued [filed as **ECF 16-15,** in D.D.C. Case No. 1:14-cv-01065-RC].

Exhibit F continued [filed as **ECF 16-16,** in D.D.C. Case No. 1:14-cv-01065-RC].

Exhibit F continued [filed as **ECF 16-17,** in D.D.C. Case No. 1:14-cv-01065-RC].

Exhibit F continued [filed as **ECF 16-18,** in D.D.C. Case No. 1:14-cv-01065-RC].

EXHIBIT F, continued [filed as **ECF 16-19,** in D.D.C. Case No. 1:14-cv-01065-RC]: Numerous documents from the minor Curls' guardianship action regarding Royalty payments.

EXHIBIT F, continued [filed as **ECF 16-20,** in D.D.C. Case No. 1:14-cv-01065-RC].

EXHIBIT G. [Filed as **ECF 16-21,** in D.D.C. Case No. 1:14-cv-01065-RC]. Engagement List of Clients; Descendants List of Riley Curls Dawes Roll #4300 / Kern Clifton Dawes Roll #4314 / George W. Curls Dawes Roll #4304.

EXHIBIT H. Correspondence from Department of Interior Concerning Freedmen dated August 11, 1938 and October 1, 1941, which evidences overt racial discrimination by the United States against Freedmen.

EXHIBIT I. *In Re: Effect of Cherokee Nation v. Nash*, etc., Case No. SC-17-07 (Feb. 22, 2021).

EXHIBIT J. George Curls' "Allotment Deed" and "Homestead Deed" received on December 5, 1910.